

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID FEIGE, On Behalf of Himself and All Other
Persons Similarly Situated,

Plaintiff,

-against-

RCN CORPORATION,

Defendant.

Case No. 07 cv 8539 (AKH)

**NOTICE OF MOTION TO
DISMISS**

PLEASE TAKE NOTICE that upon the annexed Affidavit of Joseph A. Patella, sworn to on December 14, 2007, and the exhibit attached thereto, and the accompanying Memorandum of Law in Support thereof, Defendant RCN Corporation will move this Court before the Honorable Alvin K. Hellerstein, United States District Court Judge, on a date and time to be designated by the Court, at the United States District Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an Order, pursuant to Fed.R.Civ.P. 12(b)(6) dismissing Plaintiff's claims under Section 349 of the New York General Business Law ("GBL") and Section 202(a) of the Federal Communications Act ("FCA").

Dated: New York, New York
December 14, 2007

ANDREWS KURTH LLP

By: /s/ Joseph A. Patella
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